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GRECO-001

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PAUL V. GRECO
and MARIO AIETA

Appeal 2009-004201
Application 10/805,695
Technology Center 1700

Decided: February 17, 2010

Before CATHERINE Q. TIMM, LINDA M. GAUDETTE, and
KAREN M. HASTINGS, *Administrative Patent Judges*.

TIMM, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision to reject claims 1-5 and 10-19. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

Appellants' invention relates to an infusion beverage package such as a teabag (Spec. 1:8-10). Figures 1A and 1B, reproduced below, show an infusion beverage package 10 in accordance with the invention.

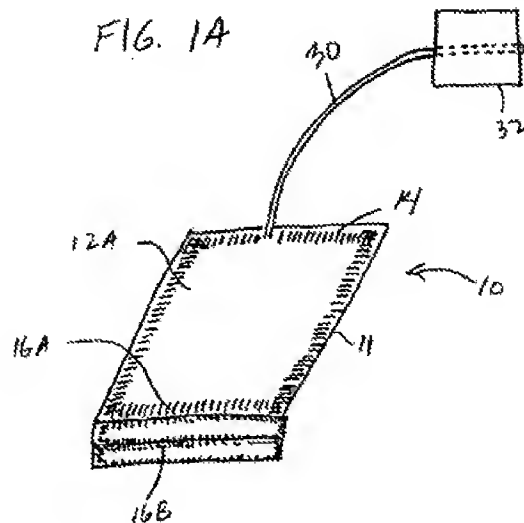


Fig. 1A is a perspective view (Spec. 5:13-14)

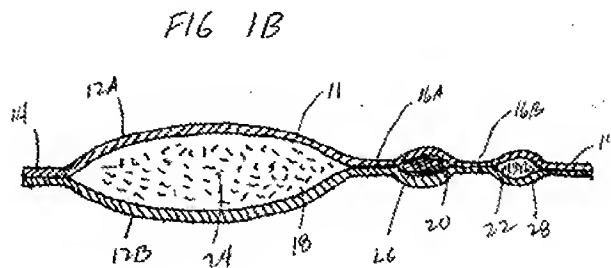


Fig. 1B is a cross-sectional view (Spec. 5:16-17)

The invention addresses the problem of the teabag rising up in the cup when immersed in water (Spec. 1:24-25). The problem is solved by including a weight (shown at 26 in Fig. 1B) within a compartment of the package that causes the package to sink (Spec. 3:20 to 4:1). Claim 1, with reference numerals from Figures 1A and 1B inserted, is illustrative:

1. An infusion beverage package comprising:

a body portion (11) comprising overlying layers of porous material (12A, 12B) that are joined to form at least one compartment (18, 20, 22), said at least one compartment (18, 20, 22) carrying infusion beverage product (24) in addition to a weight (26), said porous material of said at least one compartment (18, 20, 22) allowing for passage of water therethrough for infusion of said infusion beverage product (24) carried in said at least one compartment (18, 20, 22) and said weight (26) causing said body portion (11) to sink in water, wherein said weight (26) is realized from the group consisting of ceramic material, porcelain material, and naturally-occurring rock material.

(Claim 1; *see also*, Br. 7.)

The Examiner relies upon the following evidence:

<u>First Named Inventor</u>	<u>Document No.</u>	<u>Issue or Pub. Date</u>
Luckhaupt	US 2,193,974	Mar. 19, 1940
Rambold	US 3,542,561	Nov. 24, 1970
Kasket	US 3,257,212	Jun. 21, 1996
Kim	US 6,221,309 B1	Apr. 24, 2001
Arcari	GB 2 247,001 A	Feb. 19, 1992

www.mightybeancoffee.com "Tea Rock" teabag weight (Mar. 2004)

The Examiner maintains, and Appellants seek review, of the following rejections:

1. The rejection of claims 1-5, 10-13, 18, and 19 under 35 U.S.C. § 103 as unpatentable over Arcari in view of Kasket and further in view of Kim as evidenced by www.mightybeancoffee.com.

2. The rejection of claim 14 under 35 U.S.C. § 103(a) as being unpatentable over Arcari in view of Kasket in further view of Kim as evidenced by www.mightybeancoffee.com, and in view of Luckhaupt.
3. The rejection of claims 15-17 under 35 U.S.C. § 103(a) as being unpatentable over Arcari in view of Kasket in further view of Kim as evidenced by www.mightybeancoffee.com, and in view of Rambold.

II. DISPOSITIVE ISSUE

Have Appellants identified a reversible error in the Examiner's essential findings of fact such that the Examiner's conclusion of obviousness is unsupported by the evidence?

We answer this question in the affirmative.

III. FINDINGS OF FACT

The following Findings of Fact (FF) are particularly relevant for disposing of the issue on appeal.

The Examiner finds that Arcari describes a beverage pack including the at least one compartment (compartment 4 carrying coffee or tea, compartment 2 carrying powdered milk, and compartments 1a and 1b carrying the weight) required by the claims (Ans. 5).

Figures 1 and 2 of Arcari depict two embodiments of the pack and are reproduced below:

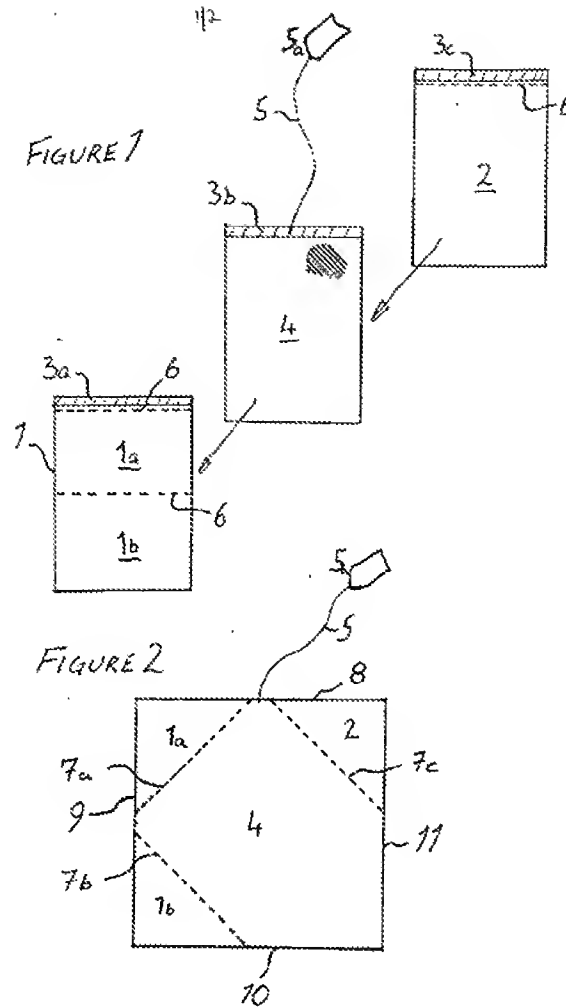


Fig. 1 depicts three compartments 1, 4, 2 to be glued together along edges 3a, 3b, and 3c to form the beverage pack (Arcari, p. 4, ll. 3-19).

Fig. 2 depicts another embodiment of the beverage pack in which compartments 1a, 1b, 2, and 4 are integrally formed in a pack of rectangular shape and connected along sealed and perforated edges 7a, 7b, and 7c (Arcari, p. 5, ll. 1-9).

Compartments 1a and 1b of Arcari are not described as carrying a weight, these compartments contain dosed quantities of sugar grains, which function as a flavoring agent (Arcari, p. 1, ll. 13-21; p. 4, ll. 3-10).

Kasket describes an infusion bag attached to a rigid member such as a stick. The stick is housed in a non-porous pouch. Figure 1 shows the package with stick 10 within pouch 7 with teabag 6 attached and is reproduced below:

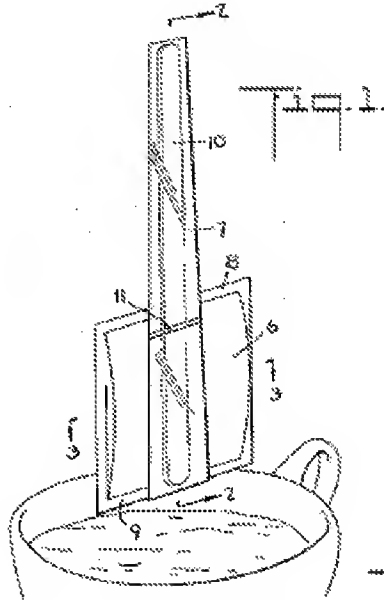


Fig. 1 is a perspective view of an embodiment of Kasket's package (Kasket, col. 1, ll. 48-49).

In one embodiment of Kasket, a weight 13 is placed in the bottom of non-porous pouch 7 or attached to the bottom of stick 10 to prevent floating due to entrapped air, the low density within the bag, and the low density of the stick (Kasket, col. 1, ll. 23-30; col. 2, ll. 35-37). Figure 5, reproduced below, shows the embodiment including the weight 13 in the non-porous pouch 7.

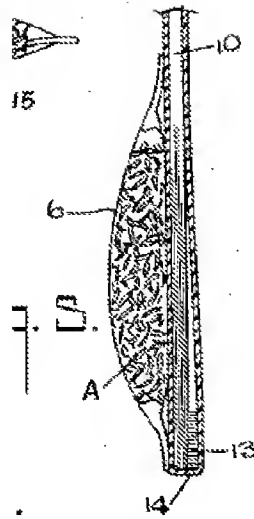


Fig. 5 is a cross-sectional view of the package according to another embodiment (Kasket, col. 1, ll. 58-59).

Kim describes a fishing weight (Title).

Tea Rock discloses solving the floating teabag problem by twisting the teabag string around the notch of a ceramic stone.

IV. PRINCIPLES OF LAW

In order to establish a prima facie case of obviousness, the examiner must show that each and every limitation of the claim is described or suggested by the prior art or would have been obvious based on the knowledge of those of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988). The analysis supporting obviousness must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention. *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967).

V. ANALYSIS

The Examiner's rationale for the combination hinges on the finding that Arcari teaches using the sugar within compartments 1a and 1b as a

weight. However, as pointed out by Appellants, Arcari does not make such a disclosure (Br. 11). The sugar functions, according to Arcari, as a sweetener. As Arcari does not support the Examiner's finding, we cannot say that the Examiner has established that there was a suggestion within the prior art, based on similar function, of substituting the sugar of Arcari with the weight of Kasket. The disclosed functions of the two elements are different and the Examiner has not established a reasonable rationale, based on knowledge within the prior art, for making the substitution called for by the claims.

VI. CONCLUSION

As all of the Examiner's rejections rely upon Arcari in the same capacity, and the additional references do not cure the defect discussed above, we do not sustain any of the rejections maintained by the Examiner.

VII. DECISION

The decision of the Examiner is reversed.

REVERSED

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